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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,109	02/26/2004	Kenneth Charles Wurtzel	AC0522US (#90613)	7592

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EXAMINER

DOONER, CHARLES

ART UNIT PAPER NUMBER

1772

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/789,109	Applicant(s) WURTZEL ET AL.	
	Examiner Charles Dooner	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 16-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Applicant's election without traverse of Claims 1-15 in the reply filed on February 6, 2006 is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1, 5, and 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to Claims 1, 10, and 11, the term "yellowness index" is vague and unclear because the values given for this term seem to correlate to the "comparative yellowness index" as stated in the other claims and as given in the specification. Correction and/or clarification is required

The terms "substantially" in claims 1 and 5, "amount sufficient" in claim 1, and "quantity sufficient" in claim 12 are relative terms which render the claims indefinite. The terms "substantially" in claims 1 and 5, "amount sufficient" in claim 1, and "quantity sufficient" in claim 12 are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear as to amounts necessary to obtain the desired yellowness index and transparency. Correction and/or clarification is required

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1- 4 and 6-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyamoto et al. (6331591) in view of Wanat et al. (5063259).

Miyamoto et al. (6331591) discloses a transparent cycloolefin copolymer (Col. 1, Lines 12-13) comprising a norbornene and ethylene (Col. 4, Line 2) with glass transition temperatures between 50°C and 250°C, preferably 80°C to 160°C (Col. 2, Lines 26-30). The cycloolefin copolymer is disclosed as being useful in containers such as bottles (Col 15, Lines 62-67). Miyamoto et al. (6331591) fails to teach the use of a tint modifier of Claims 1, 3-5, 12, and 14, the specific values of the comparative yellowness index of Claims 1 and 9-12, or the use of a tint modifier contains a coloring agent such as a blue pigment as in Claims 4 and 14.

In regards to all of the failings in Miyamoto et al. (6331591), Wanat et al. (5063259) It is inherent that Wanat et al. (5063259) teaches the values of the comparative yellowness index in the instant invention since it is stated that it is well known in the art to use blue pigments (Col. 2, Lines 27) in polymers for the purpose of counteracting the yellowing of the polymer (Col. 2, Lines 25-26). It is further inherent that Wanat et al. (5063259) teaches the tint modifier as being the cycloolefin copolymer

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and coloring agent since the tint modifier cycloolefin copolymer in Claim 4 and 14 is the same as the primary cycloolefin copolymer as in Claim 2 and 13 in the instant invention, thus being the same as adding the coloring agent directly to the cycloolefin copolymer.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the cycloolefin copolymer of Miyamoto et al. (6331591) with a blue pigment of as taught by Wanat et al. (5063259) in order to produce a transparent cycloolefin copolymer with a comparative yellowness index in the desired range.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miyamoto et al. (6331591) in view of Wanat et al. (5063259) as applied to claims 1- 4 and 6-15 above, and further in view of Hammond et al. (2003/0149148). Miyamoto et al. (6331591) in view of Wanat et al. (5063259) fails to teach the use of a cycloolefin copolymer with enhanced flow properties.

Hammond et al. (2003/0149148) teaches that the use of two cycloolefin copolymer that are substantially the same chemically (Para. 22, Lines 4) but having the second cycloolefin copolymer having a lower viscosity (enhanced flow properties) such that the first cycloolefin copolymer has an intrinsic viscosity of 5-1000ml/g(Para 11, Lines 3-4) compared to 1-500ml/g or the second cycloolefin copolymer (Para. 12, Lines 6-7) for the purpose of reducing the yellowing of the cycloolefin copolymer (Para. 10, Lines 1-9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the cycloolefin copolymer of Miyamoto et al. (6331591) in

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view of Wanat et al. (5063259) with a blue pigment of as taught by Wanat et al. (5063259) with a second cycloolefin copolymer having a lower viscosity (enhanced flow properties) as taught by Hammond et al. (2003/0149148) in order to reduce the yellowing of the cycloolefin copolymer.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Dooner whose telephone number is (571) 272-1646. The examiner can normally be reached on Monday-Friday from 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Charles Dooner
Patent Examiner
Art Unit 1772
3/2/06


HAROLD PYON
SUPERVISORY PATENT EXAMINER
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3/2/06